



Good morning everyone. I have reviewed the questions posed by Jeff following our conversation last week on the proposal to develop a town-owned fiber optic network, and have the following responses:

Q: *Can participation be voluntary or Opt-In?*

A: Yes. Participation in the new network can be voluntary, and this has been done in much of the “last mile” systems presently under development in Western Massachusetts. Of course, if the Town should decide to borrow the funds to establish the network infrastructure, all taxpayers would be responsible for the repayment of the debt through their property taxes, except to the extent that the fees paid by those residents opting-in are sufficient to repay the maturing debt service. It would seem like a good idea to have a significant amount of folks signed-up before making the decision to proceed, so the voters being asked to approve the borrowing have a reasonable expectation that enough folks have signed up to pick-up the anticipated debt service.

Q: *Is there a way to create a legal agreement between the Town and individual subscribers, where the Town can put a lien on their property for the Infrastructure line item if the subscriber stopped making their payment. In this scenario, the Town would backstop bad debt for a time but would eventually be made whole?*

A: Yes. G.L. c. 40, §58, provides that:

A city or town may impose a lien on real property located within the city or town for any local charge or fee that has not been paid by the due date, said lien shall be known as the "municipal charges lien"; provided, that a separate vote at a town meeting, or by a city or town council is taken for each type of charge or fee.

A municipal charges lien authorized under this section shall take effect upon the recording of a list of unpaid municipal charges and fees by parcel of land and by the name of the person assessed for the charge or fee in the registry of deeds of the county or district where the land subject to the lien lies.

If a charge or fee which is secured by a municipal charges lien remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under section fifty-three of chapter fifty-nine, the board or officer in charge of the collection of the municipal charge or fee, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such charge or fee to the assessors, who shall forthwith add such charge or fee to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax.

If the property to which such charge or fee relates is tax exempt, such charge or fee shall be committed as the tax. A lien under this section may be discharged by filing a certificate from the tax collector that all municipal charges or fees constituting the lien, together with any interest and costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.

Q: *Next Steps?*

A: As for next steps, once the total cost of the infrastructure has been estimated, it would make sense to obtain expressions of interest from residents, so that the Selectmen can decide whether to approach town meeting for a borrowing authorization to build-out the system. Assuming there is sufficient interest, we can assist in drafting an appropriate article and motion, which, among other things, would condition the borrowing on a determination by the Selectmen that a sufficient number of subscribers to offset debt service had been obtained, and that would also include a vote to designate the fees charged to subscribers as “municipal charges”, within the meaning of G.L. c. 40, §58. To the extent that the Town expects to have one or more privately owned ISPs providing the service over its infrastructure, we would need to work with the Town to explore whether an agreement with the ISPs could be drafted so as to permit any borrowing by the Town to be undertaken on a tax-exempt basis.

I would be happy to discuss these questions in further detail at your convenience.

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